

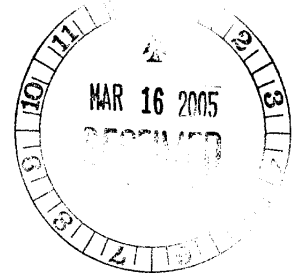
BALL JANIK LLP

A T T O R N E Y S

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FACSIMILE 202-783-6947



KARL MORELL

kmorell@dc.bjllp.com

March 16, 2005

2/3569

BY HAND DELIVERY

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street NW
Suite 715
Washington, DC 20423-001

FILED
MAR 16 2005
TRANSPORTATION BOARD

Re: STB Docket No. 927X, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption -- In Ford County, KS

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Notice of Exemption under 49 C.F.R. 1152.50. Also attached is a check covering the \$3,000 filing fee.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

ENTERED
Office of Proceedings

MAR 17 2005

Part of
Public Record

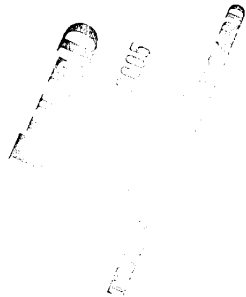
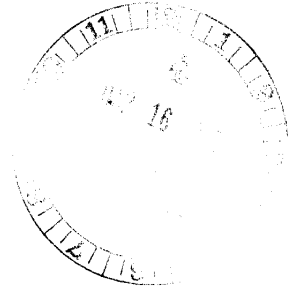
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-927X

BOOT HILL & WESTERN RAILWAY CO., L.C.
-- ABANDONMENT EXEMPTION --
IN FORD COUNTY, KANSAS

NOTICE OF EXEMPTION



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Office of Proceedings

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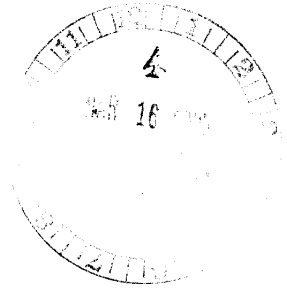
Part of
Public Record

Karl Morell
Of Counsel
Ball Janik LLP
1455 F St., N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
BOOT HILL & WESTERN
RAILWAY CO., L.C.

Dated: March 16, 2005

213569



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-927X

BOOT HILL & WESTERN RAILWAY CO., L.C.
-- ABANDONMENT EXEMPTION --
IN FORD COUNTY, KANSAS

NOTICE OF EXEMPTION

Boot Hill & Western Railway Co., L.C. ("BHWR") files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas (the "Line").

1. Proposed consummation date.

The proposed consummation date is May 5, 2005.

2. Certification required by 49 C.F.R. § 1152.50(b).

The required certification is attached hereto as Exhibit A.

3. Information required by 49 C.F.R. § 1152.22(a)(1) through (4), (7), and (8), and (e)(4).

(a) General.

(1) Exact name of applicant.

Boot Hill & Western Railway Co., L.C.

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

BHWR is a common carrier by railroad subject to 49 U.S.C.

Subtitle IV, Chapter 105.

- (3) Relief sought.

BHWR seeks to use the class exemption at 49 C.F.R. § 1152.50 to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. There has been no local or overhead traffic on the Line in over two years.

- (4) Map.

A Map depicting the trackage covered by the proposed abandonment is attached as Exhibit B.

- (7) Name, title, and address of representative of applicant to whom correspondence should be sent.

Karl Morell
Ball Janik LLP
1455 F St., N.W., Suite 225
Washington, DC 20005
(202) 638-3307

- (8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.

The Line traverses ZIP Codes: 67834, 67842, 67801 and 67843.

- (e) Rural and community impact.

- (4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads and highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

The Line traverses predominately rural areas that have adequate road and highway networks. Therefore, there is little or no likelihood that the rail corridor is needed for transit or highway corridors. The right-of-way is suitable for a recreational trail. The property underlying the right-of-way is reversionary, which would affect the transfer of the property for other than rail or rail-banking purposes.

4. The level of labor protection.

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

5. Certification.

Certificates of compliance with the notice requirements of 49 C.F.R. §§ 1152.50(d)(1) and 1105.11 are attached as Exhibit C.

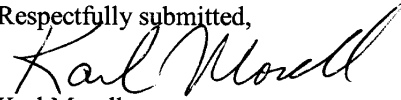
6. Environmental Report.

The Environmental Report containing information required by 49 C.F.R. § 1105.7(e) is attached hereto as Exhibit D. Based on information in our possession, the Line does not contain federally granted rights-of-way. Any documentation in BHWR's possession will be made available promptly to those requesting it.

7. Historic Report.

The Historic Report containing information required by 49 C.F.R. § 1105.8 is attached hereto as Exhibit E.

Respectfully submitted,



Karl Morell
Of Counsel
Ball Janik LLP
1455 F St., N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
BOOT HILL & WESTERN
RAILWAY CO., L.C.

Dated: March 16, 2005

EXHIBIT A

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

STATE OF KANSAS

)

)

ss.

FORD COUNTY

)

I, Thomas Willis, being duly sworn depose and state that I am President of Boot Hill & Western Railway Co., L.C. ("BHWR"), that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

I hereby certify that no local traffic has been handled to or from any customer over the rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas (the "Line") for at least two (2) years prior to the date hereof. Also, no overhead traffic has been handled on the Line for at least two (2) years prior to the date hereof. Further, no formal complaint filed by a user of rail service on the Line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period.



EXHIBIT B

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.50(d)(1), the undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-927X was mailed via first class mail on March 4, 2005 to the following parties:

State Public Service Commission

Dept. of Transportation
Room 800 N
Docking State Office Bldg.
Topeka, KS 66612

Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Military Traffic Management Command

MTMCTEA
ATTN: Railroads for National Defense
720 Thimble Shoals Blvd.
Suite 130
Newport News, VA 23606-2574

National Park Service

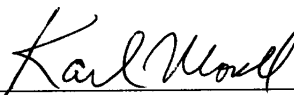
U.S. Department of Interior - National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

National Park Service
1709 Jackson Street
Omaha, NE 68102

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Yates Building
201 14th Street, S.W.
Washington, DC 20250

Dated: March 16, 2005


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-927X was advertised on March 11, 2005 in the Dodge City Globe, a newspaper of general circulation in Ford County, Kansas as required by 49 C.F.R. § 1105.12.

Dated: March 16, 2005


Karl Morell

**ENVIRONMENTAL REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.7, the undersigned hereby certifies that a copy of the Environmental Report in Docket No. AB-927X was mailed via first class mail on February 24, 2005, to the following parties:

Department of Transportation
Room 800 N
Docking State Office Bldg.
Topeka, KS 66612

Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Ford County Commissioners
Ford County Government Center
100 Gunsmoke
Dodge City, KS 67801

Kansas State Conservationist
USDA Natural Resources Conservation Service
760 South Broadway
Salina, KS 67401-4642

U.S. Fish and Wildlife Service
315 Houston Street, Suite E
Manhattan, KS 66502-6172

National Park Service
1709 Jackson Street
Omaha, NE 68102

Kansas Department of Health and Environment
Division of Environment
1000 S.W. Jackson Street
Topeka, KS 66612-1367

U.S. Environmental Protection Agency
901 N 5th Street
Kansas City, KS 66101-2907

U.S. Army Engineer District, Tulsa
1645 S. 101st East Avenue
Tulsa, OK 74128

The National Geodetic Survey
Department of Commerce/NOAA
SSMC3
Station 9356
1315 E. West Highway
Silver Spring, MD 20910

Date: March 16, 2005


Karl Morell

**HISTORIC REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in Docket No. AB-927X was mailed via first class mail on February 24, 2005, to the following party:

Kansas State Historical Society
6425 S.W. 6th Avenue
Topeka, KS 66615-1099

Date: March 16, 2005


Karl Morell

EXHIBIT D

ENVIRONMENTAL REPORT

(49 C.F.R. 1105.7)

Docket No. AB-927

**BOOT HILL & WESTERN RAILWAY CO., L.C.
--ABANDONMENT EXEMPTION--
IN FORD COUNTY, KANSAS**

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Boot Hill & Western Railway Co., L.C. (the "BHWR") proposes to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas (the "Line"). Upon receipt of abandonment authority, the BHWR intends to remove the rail, track material, and crossties. There are no plans to remove the five bridge structures on the Line.

BHWR acquired the Line from the Dodge City Ford & Bucklin Railroad Company in 2000.¹ No local traffic has moved over the Line in over four years. Any overhead traffic can be rerouted over other rail lines.

¹ See STB Docket No. 33945, *Boot Hill & Western Railway Co., L.C. – Acquisition Exemption – Dodge City Ford & Bucklin Railroad Company* (not printed), served December 13, 2000.

The Line has had no traffic in recent years. In addition, no maintenance has been performed on the Line for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Line.

The only alternative to abandonment would be not to abandon the Line thereby forcing BHWR to pass the opportunity costs of retaining the Line onto the remainder of its rail operations. This would not be a prudent use of the BHWR's resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

No passenger traffic will be diverted to other modes as a result of the proposed abandonment. No local traffic has been handled on the Line for over four years and any overhead traffic can be rerouted over other rail lines. Consequently, the proposed abandonment will have no adverse effects on regional or local transportation systems and patterns.

(3) Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land. (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

(i) BHWR is confident that the proposed abandonment is not inconsistent with existing land use plans. The Ford County Commissioners were contacted concerning the proposed

abandonment. See Exhibit 2. No response has been received to date. A copy of this Report has been mailed to the appropriate local and state agencies for their information and comment.

(ii) The proposed abandonment will not have any detrimental effect on any prime agricultural land. BHWR notified the State Conservationist of the proposed abandonment and requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 3. No response to this request has been received to date. A copy of this Report is being supplied to the USDA Natural Resources Conservation Service for its information and comment.

(iii) The Line does not pass through a designated coastal zone.

(iv) The involved right-of-way does not appear to be suitable for alternative public use other than a recreational trail since it is located in rural, sparsely populated areas. BHWR intends to rail-bank the Line.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

(i) The proposed abandonment will have no effect on the transportation of energy resources.

(ii) The proposed abandonment will have no effect on the transportation of recyclable commodities.

(iii) The proposed abandonment will have no effect on overall energy efficiency as no local traffic has been handled on the Line in over four years and the overhead traffic can be rerouted over other rail lines.

(iv) The proposed abandonment will not cause diversions of rail traffic to motor carriage, since no local traffic has been handled on the Line in over four years and the overhead traffic can be rerouted over other rail lines.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply. (ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(i) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(ii) The proposed abandonment will not result in meeting or exceeding the specified thresholds.

(iii) The proposed abandonment will not affect the transportation of ozone depleting materials.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) an incremental increase in noise levels of three decibels Ldn or more; or (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Not applicable

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings). (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials. (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(i) The proposed abandonment will have no detrimental effects on public health and safety. The removal of grade crossings and the associated signs and structures will enhance public safety by eliminating distractions to vehicular traffic crossing the Line.

(ii) The proposed abandonment will not affect the transportation of hazardous materials.

(iii) There are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the rail corridor of the Line.

(8) Biological Resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(i) The proposed abandonment will not have an adverse affect on endangered or threatened species or areas designated as a critical habitat. BHWR notified the U.S. Fish and Wildlife Service of the proposed abandonment and requested assistance in determining whether endangered or threatened species or areas designated as a critical habitat are likely to be adversely affected. See Exhibit 4. In its response, the Wildlife Service concluded "that no threatened and endangered species are likely to be affected by the proposed action. In addition, [the Wildlife Service has] no concerns with impacts to other fish and wildlife resources, such as wetlands or migratory birds." See Exhibit 4. A copy of this Report is being supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) BHWR does not believe that any wildlife sanctuaries or refuges, National or State parks or forests would be adversely affected by the proposed abandonment. BHWR notified the National Parks Service of the proposed abandonment and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. See Exhibit 5. To date, no response to this request has been received. A copy of this Report is being supplied to the National Park Service for its information and comment.

(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies. (ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required

for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects. (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

- (i) The proposed abandonment will be consistent with applicable water quality standards.

BHWR contacted the Kansas Department of Health and Environment ("KDHE") and the U.S. Environmental Protection Agency concerning this matter requesting assistance in determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 6. In its response, KDHE agreed that no permit would be required from KDHE for the proposed salvage activities. In addition, the proposed salvage operations will not involve any clearing, grubbing, grading or excavation which disturbs one or more acre. Consequently, a construction storm-water permit will not be required. A copy of this Report is being supplied to the U.S. Environmental Protection Agency and the Kansas Department of Health and Environment for their information and further comment.

- (ii) BHWR is confident that no designated wetlands or 100-year flood plains will be adversely affected by the proposed abandonment. BHWR contacted the Corps of Engineers concerning these matters. See Exhibit 7. To date, no response to this inquiry has been received. A copy of this Report is being supplied to the U.S. Army Corps of Engineers for its information and comment.

- (iii) BHWR believes the proposed abandonment will not require the issuance of any permits under Section 402 of the Clean Water Act. BHWR contacted the U.S. Environmental Protection Agency concerning this matter and requested assistance in identifying any potential effects on applicable water quality standards and determining whether the proposed abandonment is consistent with applicable Federal, State, or local water quality standards. See Exhibit 6. To

date, no response to this request has been received. A copy of this Report is being supplied to the U.S. Environmental Protection Agency for its information and comment.

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

BHWR does not expect any adverse environmental impact from the proposed abandonment and, therefore, sees no need for any mitigating actions. BHWR will, of course, adhere to any remedial actions suggested by the recipients of this Report and required by the Board.

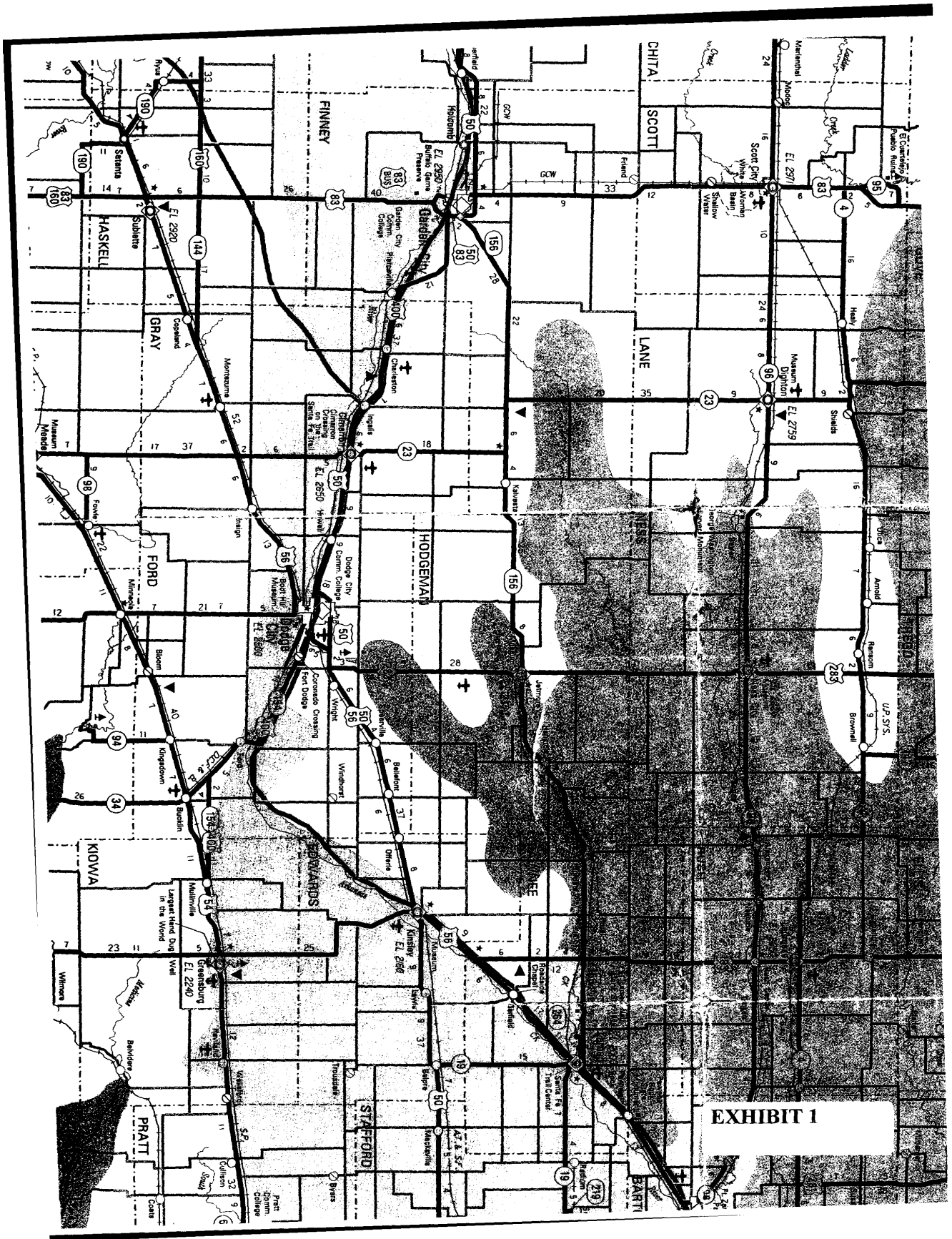


EXHIBIT 2

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

Ford County Commissioners
Ford County Government Center
100 Gunsmoke
Dodge City, KS 67801

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on existing land use plans. We must determine whether the proposed abandonment is inconsistent with existing land use plans.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Boot Hill & Western Railway Co., L.C.

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

State Conservationist
USDA Natural Resources Conservation Service
760 South Broadway
Salina, KS 67401-4642

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on prime agricultural land.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell
Attorney for:
Boot Hill & Western Railway Co., L.C.

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

U.S. Fish and Wildlife Service
315 Houston Street, Suite E
Manhattan, KS 66502-6172

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in determining whether it is likely to adversely affect endangered or threatened species or areas designated as a critical habitat.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell
Attorney for:
Boot Hill & Western Railway Co., L.C.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

February 16, 2005

Karl Morell, Attorney
Ball Janik, LLP
1455 F Street, NW, Suite 225
Washington, DC 20005

RE: Docket No. AB-927; Boot Hill & Western Railway Co., L.C.

Dear Mr. Morell:

This is in response to your letter of January 21, 2005, describing a proposal by the Boot Hill & Western Railway Company for the abandonment of 15.8 miles of existing railway line between Bucklin and Wilroads, in Ford County, Kansas. We have reviewed this proposal and I conclude that no threatened and endangered species are likely to be affected by the proposed action. In addition, I have no concerns with impacts to other fish and wildlife resources, such as wetlands or migratory birds. Therefore, the U.S. Fish and Wildlife Service has no objection to this project as proposed.

The Service encourages the Boot Hill & Western Railway Company to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Thank you for this opportunity to comment on your proposal.

Sincerely,

Robert Dach
Acting Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

EXHIBIT 5

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

National Park Service
1709 Jackson Street
Omaha, NE 68102

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

Karl Morell

Attorney for:

Boot Hill & Western Railway Co., L.C.

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

Department of Health and Environment
1000 SW Jackson Street
Suite 540
Topeka, KS 66612-1368

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. –
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. BHWR does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Boot Hill & Western Railway Co., L.C.

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TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

U.S. Environmental Protection Agency
901 N 5th Street
Kansas City, KS 66101-2907

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on applicable water quality standards. We also seek your assistance in determining whether the proposed abandonment is consistent with applicable Federal, State or local water quality standards. BHWR does not believe any permits under Section 402 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005

Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Boot Hill & Western Railway Co., L.C.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

February 1, 2005

Karl Morell
Ball Janik LLP
1455 F Street, NW Suite 225
Washington, D.C. 20005

RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C.
Railway Line Abandonment in Ford County Kansas

Dear Mr. Morell;

We have reviewed your letter and attachments received January 27, 2005 for the project referenced above. From the information you provided, the Kansas Department of Health and Environment (KDHE) agrees with your applicability determination. Demolition activities such as abandoning the rail line are not subject to any permit issued by our agency under Section 402 of the Clean Water Act.

If the project involves regarding or other ancillary construction activities though, a construction stormwater permit may be required. Any construction activity such as clearing, grubbing, grading, and excavation, etc., which disturbs one acre or more, or which is part of a common plan of development or sale disturbing one acre or more is subject to construction stormwater permitting requirements. The Kansas Department of Health and Environment (KDHE) authorizes discharges of stormwater runoff associated with construction activities under the National Pollutant Discharge Elimination System (NPDES) construction stormwater general permit S-MCST-0110-1. The owner or operator (the responsible party) of any construction activity requiring authorization under the construction stormwater general NPDES permit must apply for authorization. If your client's activity also involves construction activity subject to these requirements, your client must submit a complete construction stormwater permit application to KDHE prior to commencing construction. Application instructions; the Notice of Intent (the application form); the Kansas construction stormwater general NPDES permit; and other resources for completing an application are available on-line at www.kdhe.state.ks.us/stormwater if needed.

DIVISION OF ENVIRONMENT

Bureau of Water

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE 420, TOPEKA, KS 66612-1367

Voice 785-296-5524

Fax 785-296-5509

<http://www.kdhe.state.ks.us/geo/>

Printed on Recycled Paper

Karl Morell
February 1, 2005
Page Two

Please contact me if you have any further questions regarding construction stormwater permitting at 785-296-5549, by e-mail at abrooks@kdhe.state.ks.us or by mail.

Sincerely,



Alan W. Brooks, P.E.
Industrial Programs Section
Bureau of Water

AB: trh

cc: Don Carlson, BOW
Ed Dillingham, BOW
Construction Stormwater Correspondence File
Southwest District Office
South Central District Office

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

U.S. Army Engineer District, Tulsa
1645 S. 101st East Avenue
Tulsa, OK 74128

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. --
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. A map of the proposed abandonment is attached.

Pursuant to the STB's environmental regulations at 49 C.F.R., Part 1105, we are advising you of this proposed action so that you may assist us in identifying any potential effects on designated wetlands or 100-year flood plains. BHWR does not believe any permits under Section 404 of the Clean Water Act will be required.

We would appreciate your review of the proposed abandonment and any comments you may wish to offer. We would also appreciate you providing us with a written response so that we can forward it to the STB.

BALL JANIK LLP

January 21, 2005
Page 2

Thank you in advance for your prompt assistance. If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl Morell".

Karl Morell

Attorney for:

Boot Hill & Western Railway Co., L.C.

EXHIBIT E

HISTORIC REPORT

(49 C.F.R. 1105.8)

Docket No. AB-927

**BOOT HILL & WESTERN RAILWAY CO., L.C.
--ABANDONMENT EXEMPTION--
IN FORD COUNTY, KANSAS**

The Historic Report should contain the information required by 1105.7(e)(1) of the Environmental Report. The following is excerpted from the Environmental Report prepared for the proposed abandonment:

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Boot Hill & Western Railway Co., L.C. (the "BHWR") proposes to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas (the "Line"). Upon receipt of abandonment authority, the BHWR intends to remove the rail, track material, and crossties. There are no plans to remove the five bridge structures on the Line.

BHWR acquired the Line from the Dodge City Ford & Bucklin Railroad Company in 2000.¹ No local traffic has moved over the Line in over four years. Any overhead traffic can be rerouted over other rail lines.

¹ See STB Docket No. 33945, *Boot Hill & Western Railway Co., L.C. – Acquisition Exemption – Dodge City Ford & Bucklin Railroad Company* (not printed), served December 13, 2000.

The Line has had no traffic in recent years. In addition, no maintenance has been performed on the Line for some time. Therefore, the proposed abandonment will have no impact on rail freight operations and maintenance practices on the Line.

The only alternative to abandonment would be not to abandon the Line thereby forcing BHWR to pass the opportunity costs of retaining the Line onto the remainder of its rail operations. This would not be a prudent use of the BHWR's resources.

A map of the proposed abandonment is attached hereto as Exhibit 1.

HISTORIC REPORT

1. *A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;*

Maps and the identification of all structures on the Line that are 50 years old or older have been supplied to the Kansas State Historical Society ("KSHS"). See Exhibit 2.

2. *A written description of the right of way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;*

The right-of-way is predominately 100 feet in width. The 15.8-mile rail Line is located between Bucklin and Wilroads, in Ford County, Kansas, beginning at milepost 0.0, at Bucklin, and running generally in a northwesterly direction through the community of Ford to the end of the line at milepost 15.8, at Wilroads. The Line crosses through predominately flat, rural areas.

3. *Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediate surrounding area;*

The only structures on the Line associated with the proposed abandonment that may be 50 years old or older are five (5) bridges. The five bridges are of quite common design and construction and of no historical significance. Pictures of the bridges are contained in Exhibit 2.

4. *The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;*

There are five bridges located on the Line which may be fifty years old or older. See Exhibit 2. BHWR is not in possession of any engineering documents regarding the maintenance or repair of these bridges.

5. *A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;*

The Line was originally constructed by the Arkansas, Kansas & Colorado Railway Company ("AK&CR"). Construction of the Line was completed in 1887. In 1891, the Line was sold to the Chicago, Rock Island & Pacific Railway ("Rock Island"). The Line was operated by the Rock Island until the Rock Island was ordered liquidated. The Ford County Historic Railroad Preservation Foundation acquired the Line in the early 1980's and subsequently sold the Line in 1989 to the Dodge City Ford & Bucklin Railroad Company ("DCF&B"). The DCF&B utilized the Line primarily for tourist operations until the Line was sold to BHWR.

The Line is in poor condition and has seen no traffic in recent years. Because of the lack of traffic on the Line, the Line has not been adequately maintained. Because no traffic has moved on the Line in recent years, no changes to current transportation patterns are anticipated upon the abandonment of the Line.

6. *A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;*

There are no available individual drawings for the five bridges on the Line. Each of the bridges is quite common in design and construction and is of no historical significance. They are typical of many bridges found throughout North America.

7. *An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);*

The five bridges are quite common in design and construction. None has any historical significance as to the history of railroad construction or operation. The KSHS has reviewed the proposed abandonment and determined that "the proposed project will not adversely affect any property listed or eligible for listing on the National Register of Historic Places." See Exhibit 3.

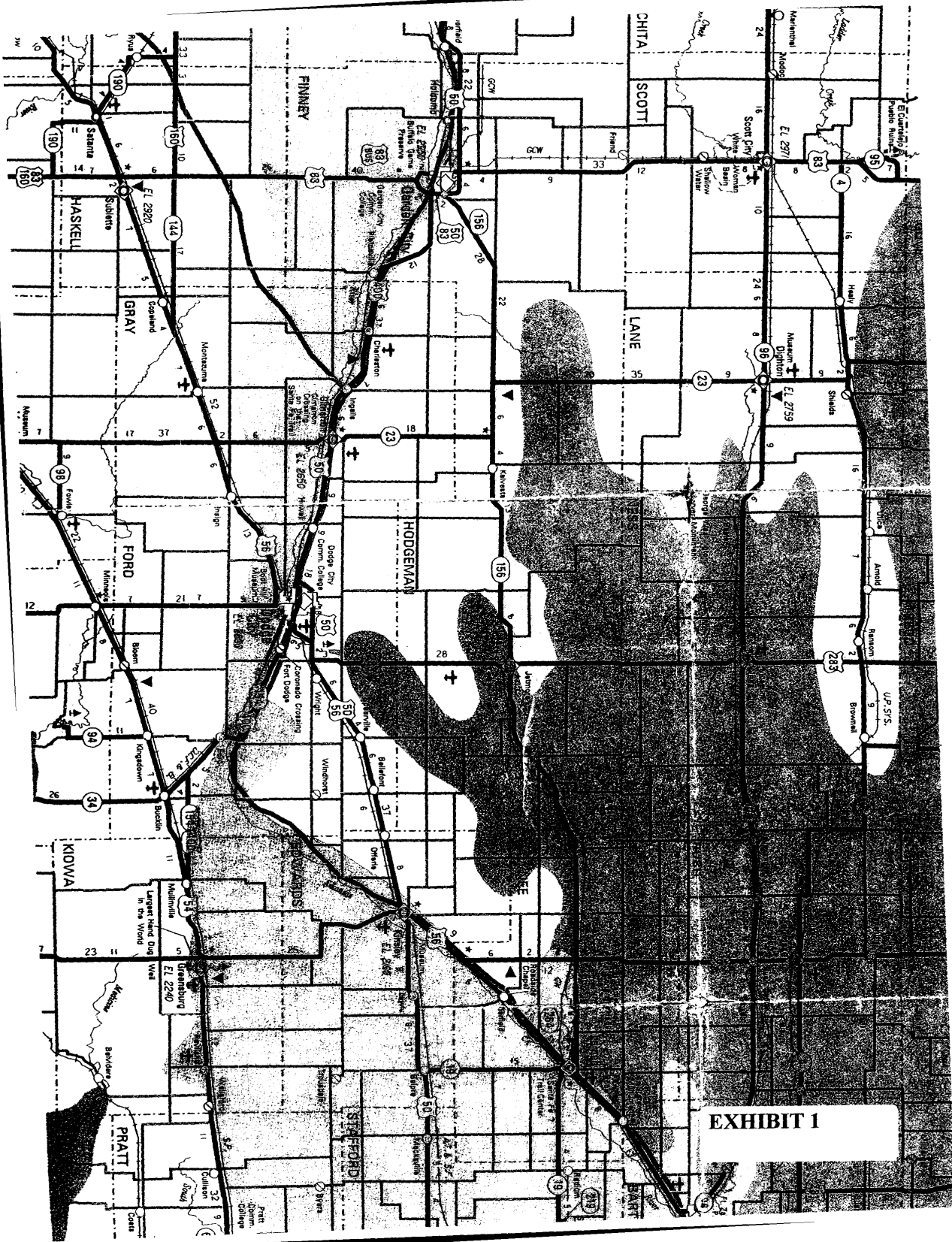
There are also no known archeological resources in the project area.

8. *A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic waste), and the surrounding terrain.*

There are no existing records as to the nature of any known subsurface ground disturbance or fill, or environmental condition that might affect the archeological recovery of any potential resources.

9. *Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specific non railroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (i.e. prehistoric or native American).*

The BHWR does not foresee the likelihood that any additional information will need to be supplied in association with the proposed line abandonment other than the information previously submitted. But, if any additional information is requested, BHWR will promptly supply the necessary information.



BALL JANIK LLP

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WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307

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KARL MORELL
OF COUNSEL

kmorell@bjllp.com

January 21, 2005

Kansas State Historical Society
6425 S.W. 6th Avenue
Topeka, KS 66615-1099

**RE: Docket No. AB-927, Boot Hill & Western Railway Co., L.C. —
Abandonment Exemption—In Ford County, Kansas**

Dear Sir/Madam:

Boot Hill & Western Railway Co., L.C. ("BHWR") is planning to file a Notice of Exemption with the Surface Transportation Board ("STB"), on or about March 1, 2005, for BHWR to abandon the 15.8-mile rail line located between milepost 0.0, at Bucklin, and milepost 15.8, at Wilroads, in Ford County, Kansas. One of the requirements for this filing with the STB is that the owner of the rail line contact the State Historic Preservation Office regarding the proposed abandonment.

Enclosed are maps depicting the area where the rail line is located. The proposed abandonment will involve the removal of the rail, track material, and crossties; however, there are currently no plans to remove any existing structures along the track.

The 15.8-mile rail line BHWR seeks to abandon begins at milepost 0.0, at Bucklin, and extends generally in a northwesterly direction to the end of the line at milepost 15.8, at Wilroads. The line crosses through predominately flat, rural areas.

There are five (5) bridges on the rail line that appear to be 50 years old or older. Pictures of the bridges and their milepost locations are attached. These structures are quite common in design and construction and, in BHWR's view, have no historical significance.

BALL JANIK LLP

January 21, 2005

Page 2

We will send you a copy of the Historic Report as soon as it is completed. If I can of further assistance regarding this matter, please call me at (202) 638-3307.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell". The signature is fluid and cursive, with the first name "Karl" being more prominent than the last name "Morell".

Karl Morell

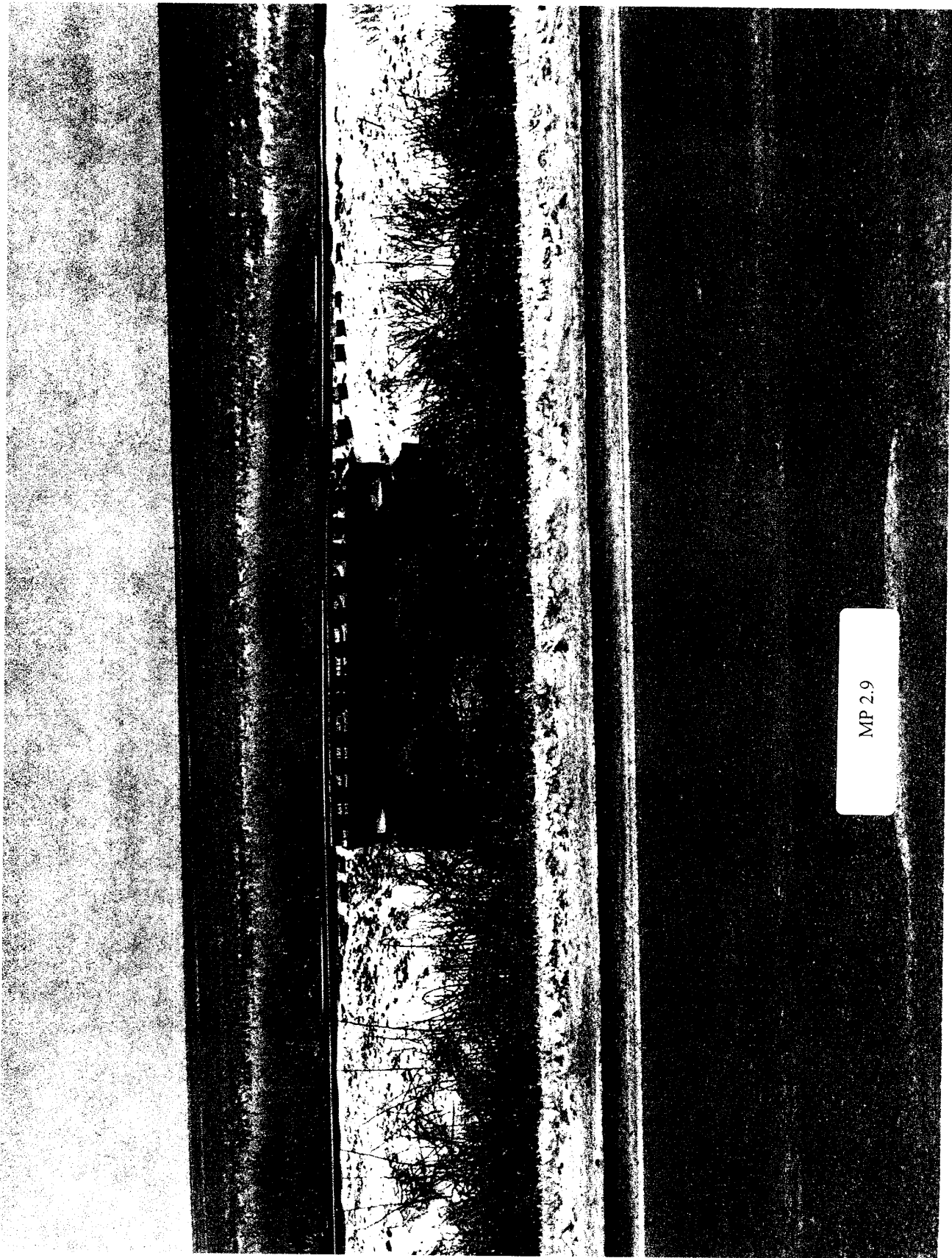
Attorney for

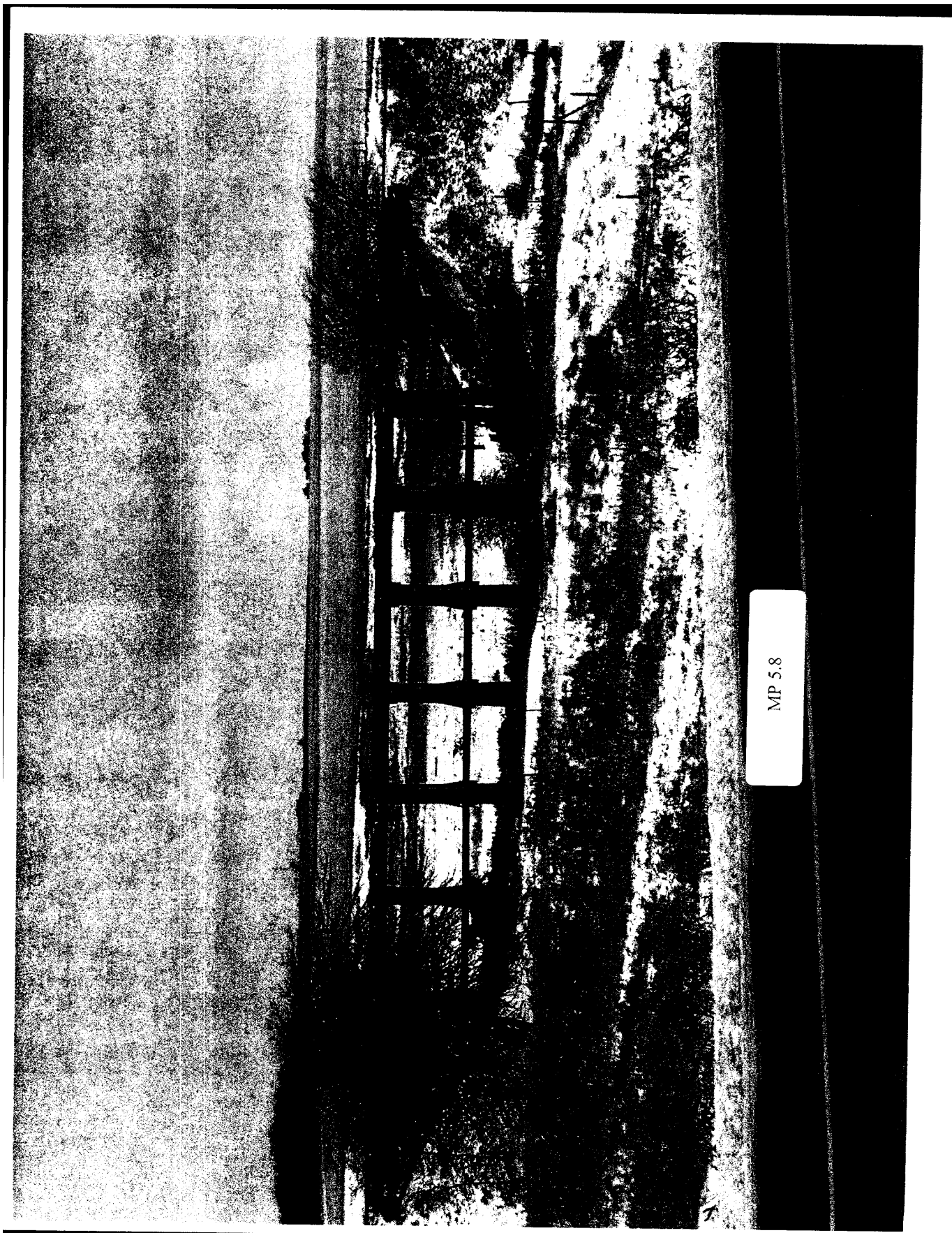
Boot Hill & Western Railway Co., L.C.



MP 0.9

MP 2.9



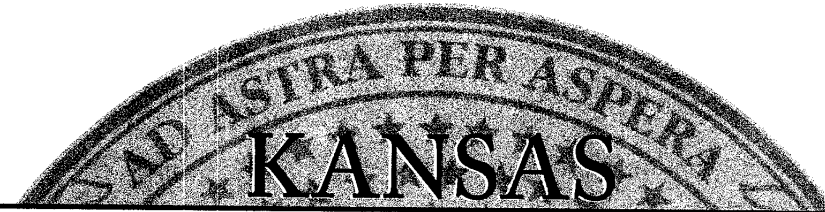


MP 5.8



MP 7.8





SHPO No. 05-01-164

Kansas State Historical Society
Jennie Chinn, *Executive Director*

KATHLEEN SEBELIUS, GOVERNOR

February 10, 2005

Karl Morell
Attorney
Ball Janik LLP
1455 F Street NW Suite 225
Washington DC 20005

RE: Abandonment of 15.8 Miles of Railroad Between Bucklin and Wilroads
Ford County

Dear Mr. Morell:

Our staff has reviewed the materials received January 27, 2005 regarding the above referenced project in accordance with 36 CFR 800. The SHPO has determined the proposed project will not adversely affect any property listed or eligible for listing on the National Register of Historic Places.

If you have any questions regarding this review, please contact Patrick Zollner (785)272-8681 ext. 257.

Sincerely,

Jennie Chinn
State Historic Preservation Officer

Christy Davis
Deputy State Historic Preservation Officer